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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 JONATHAN RETTA, *et al.*,

12 Plaintiffs,

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14 v.

15 MILLENNIUM PRODUCTS, INC.,  
16 *et al.*,

17 Defendants.  
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Case No. 2:15-CV-01801-PSG-AJW

**[PROPOSED] ORDER  
PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT**

Judge: Hon. Philip S. Gutierrez

5AC Filed: June 27, 2016

Trial Date: December 6, 2016

1 WHEREAS, on March 11, 2015, Plaintiffs filed a proposed nationwide (or,  
2 in the alternative, California and New York) class action lawsuit against  
3 Millennium Products, Inc. (“Millennium”) in the United States District Court for  
4 the Central District of California, Case No. 15-CV-1801-PSG-AJW, which asserted  
5 claims for violations of the California Consumers Legal Remedies Act (Cal. Civ.  
6 Code § 1750, *et seq.*) (“CLRA”), California’s Unfair Competition Law (Cal. Bus.  
7 & Prof. Code § 17200, *et seq.*) (the “UCL”), California’s False Advertising Law  
8 (Cal. Bus. & Prof. Code § 17500, *et seq.*) (the “FAL”), New York’s Deceptive and  
9 Unfair Trade Practices Act, and New York General Business Law § 349  
10 (“NYGBL”), that related to the advertising, labeling, and marketing of the  
11 antioxidant content of the Subject Products.

12 WHEREAS, on April 28, 2015, Millennium filed a motion to dismiss or  
13 strike the above-referenced complaint. In response, on May 19, 2015, Plaintiffs  
14 filed a First Amended Complaint asserting additional facts regarding their claims  
15 for injunctive relief, standing, and clarifying the details regarding their purchases of  
16 Millennium’s products.

17 WHEREAS, on June 19, 2015, Millennium filed a motion to dismiss or strike  
18 Plaintiffs’ First Amended Complaint, which the Court granted in part (as to claims  
19 for injunctive relief) and denied in part (as to the remainder of the claims at issue).  
20 In response, on October 2, 2015, Plaintiffs filed a Second Amended Complaint  
21 pleading additional facts in support of their claims for injunctive relief.

22 WHEREAS, on October 8, 2015, pursuant to a stipulation of the Parties,  
23 Plaintiffs filed a Third Amended Complaint adding claims regarding the purported  
24 alcohol content of Millennium products and Millennium’s alleged failure to provide  
25 federal alcohol warnings regarding the same. Millennium answered the Third  
26 Amended Complaint on November 3, 2015.

27 WHEREAS, on February 11, 2016, pursuant to a stipulation of the parties,  
28 Plaintiffs filed a Fourth Amended Complaint adding Whole Foods Market, Inc.

1 (“Whole Foods”) as a Defendant. Millennium answered the Fourth Amended  
2 Complaint on February 29, 2016, and Whole Foods moved to dismiss the Fourth  
3 Amended Complaint on April 7, 2016.

4 WHEREAS, on June 22, 2016, pursuant to a stipulation of the Parties,  
5 Plaintiffs filed a Fifth Amended Complaint adding additional claims for damages  
6 and injunctive relief and pleading additional causes of action regarding  
7 Millennium’s alleged failure to correctly state the sugar content of its products on  
8 the labels of the products. The Fifth Amended Complaint asserted claims for  
9 violations of the CLRA, UCL, FAL, and NYGBL, and for breach of express  
10 warranty, breach of the implied warranty of merchantability, negligent  
11 misrepresentation, fraud, and unjust enrichment. Millennium answered the Fifth  
12 Amended Complaint on July 6, 2016 and Whole Foods moved to dismiss the Fifth  
13 Amended Complaint on July 11, 2016.<sup>1</sup>

14 WHEREAS, before entering into this Agreement, the Parties exchanged, and  
15 met and conferred concerning, several sets of discovery requests, including  
16 interrogatories and requests for production. In response, Millennium produced  
17 thousands of pages of documents to Plaintiffs, including Millennium’s test results  
18 and sales information. Plaintiffs also produced documents to Millennium,  
19 including their test results, consumer surveys, and other materials. Plaintiffs also  
20 served subpoenas pursuant to Fed. R. Civ. P. 45 on American Herbal Products  
21 Association, Inc. and Kombucha Brewers International. After a meet and confer  
22 process, American Herbal Products, Inc. and Kombucha Brewers International  
23 produced test results concerning Millennium’s products and other information.  
24 Plaintiffs reviewed all of the documents produced by Millennium, American Herbal  
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26 <sup>1</sup> Whole Foods Market, Inc. moved to dismiss, in part, on the grounds that as a  
27 Texas holding company with no business operations, employees or any other  
28 contact with the state of California, it is not subject to the jurisdiction of the courts  
in California. This case settled prior to the ruling on that motion.

1 Products Association, Inc. and Kombucha Brewers International as well as  
2 documents and information obtained through their own research and investigation.

3 WHEREAS, before entering into this Agreement, the Parties, by and through  
4 their respective counsel, conducted a thorough examination, investigation, and  
5 evaluation of the relevant law, facts, and allegations to assess the merits of the  
6 claims and potential claims to determine the strength of liability, potential remedies,  
7 and all defenses thereto, including an extensive investigation into the facts and law  
8 relating to (i) label design and product formulation; (ii) the marketing and  
9 advertising of the products; (iii) sales, pricing, and financial data; and (iv) the  
10 sufficiency of the claims and appropriateness of class certification.

11 WHEREAS, the Parties' Agreement was reached as a result of extensive  
12 arm's-length negotiations between the Parties and their counsel. The Parties have  
13 engaged in extensive settlement discussions to determine if the Parties could reach  
14 a resolution short of protracted litigation. This included a full day of mediation  
15 before Jill R. Sperber, Esq. of Judicate West on March 25, 2016, several weeks of  
16 follow-on settlement discussions among counsel, and a further half day of  
17 mediation with Ms. Sperber via telephone on May 20, 2016 before a settlement in  
18 principle was reached. Before and during these settlement negotiations, the Parties  
19 had an arm's-length exchange of sufficient information to permit Plaintiffs and their  
20 counsel to evaluate the claims and potential defenses and to meaningfully conduct  
21 informed settlement discussions.

22 WHEREAS, the Court has carefully reviewed the Agreement, including the  
23 exhibits attached thereto and all file, records and prior proceedings to date in this  
24 matter, and good cause appearing based on the record,

25 IT IS hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

26 1. Defined Terms. For purposes of this Order, except as otherwise  
27 indicated herein, the Court adopts and incorporates the definitions contained in the  
28 Stipulation of Settlement.

1           2.     Stay of the Action. All proceedings in the Action, other than  
2 proceedings necessary to carry out or enforce the terms and conditions of the  
3 Agreement and this Order, are hereby stayed.

4           3.     Preliminary Class Certification for Settlement Purposes Only. The  
5 Action is preliminarily certified as a class action, for settlement purposes only,  
6 pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3). The Court preliminarily finds  
7 for settlement purposes that: (a) the Class certified herein numbers at least in the  
8 tens of thousands of persons, and joinder of all such persons would be  
9 impracticable; (b) there are questions of law and fact that are common to the Class,  
10 and those questions of law and fact common to the Class predominate over any  
11 questions affecting any individual Class Member; (c) the claims of the Plaintiffs are  
12 typical of the claims of the Class they seek to represent for purposes of settlement;  
13 (d) a class action on behalf of the Class is superior to other available means of  
14 adjudicating this dispute; and (e) as set forth below, Plaintiffs and Plaintiffs'  
15 Counsel are adequate representatives of the Class. Defendants retain all rights to  
16 assert that the Action may not be certified as a class action, other than for  
17 settlement purposes. The Court also concludes that, because the Action is being  
18 settled rather than litigated, the Court need not consider manageability issues that  
19 might be presented by the trial of a nationwide class action involving the issues in  
20 this case. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

21           4.     Class Definition. The Class shall consist of all persons in the United  
22 States and United States Territories who purchased at retail one or more of the  
23 Subject Products during the Class Period. Specifically excluded from the Class are:  
24 (a) Defendants and their employees, principals, officers, directors, agents, affiliated  
25 entities, legal representatives, successors and assigns; (b) the judges to whom the  
26 Action has been or is assigned and any members of their immediate families;  
27 (c) those who purchased the Subject Products for the purpose of resale; and (d) all  
28 persons who have filed a timely Request for Exclusion from the Class. The

1 “Subject Products” are all products sold by Defendants during the Class Period  
2 under Millennium’s Enlightened Kombucha, Enlightened Synergy, Classic  
3 Kombucha, and Classic Synergy product lines: Classic Kombucha Original, Classic  
4 Kombucha Citrus, Classic Kombucha Gingerade, Classic Kombucha Multi-Green,  
5 Classic Kombucha Third Eye Chai, Classic Synergy Cosmic Cranberry, Classic  
6 Synergy Maqui Berry Mint, Classic Synergy Divine Grape, Classic Synergy  
7 Gingerberry, Classic Synergy Raspberry Rush, Classic Synergy Strawberry  
8 Serenity, Classic Synergy Superfruits, Classic Synergy Trilogy, Enlightened  
9 Kombucha Botanic No. 3, Enlightened Kombucha Botanic No. 7, Enlightened  
10 Kombucha Botanic No. 9, Enlightened Kombucha Citrus, Enlightened Kombucha  
11 Gingerade, Enlightened Kombucha Multi-Green, Enlightened Kombucha Original,  
12 Enlightened Synergy Black Chia, Enlightened Synergy Cosmic Cranberry,  
13 Enlightened Synergy Cherry Chia, Enlightened Synergy Gingerberry, Enlightened  
14 Synergy Grape Chia, Enlightened Synergy Green Chia, Enlightened Synergy  
15 Guava Goddess, Enlightened Synergy Mystic Mango, Enlightened Synergy  
16 Passionberry Bliss, Enlightened Synergy Raspberry Chia, Enlightened Synergy  
17 Strawberry Serenity, and Enlightened Synergy Trilogy.

18 5. Class Representative and Plaintiffs’ Counsel. Plaintiffs Jonathan  
19 Retta, Kirsten Schofield, and Jessica Manire are designated as representatives of the  
20 conditionally certified Class. The Court preliminarily finds that these individuals  
21 are similarly situated to absent Class Members and therefore typical of the Class,  
22 and that they will be adequate class representative. Further, Bursor & Fisher, P.A.,  
23 whom the Court finds are experienced and adequate counsel for purposes of these  
24 Settlement approval proceedings, are hereby designated as Plaintiffs’ Counsel.

25 6. Preliminary Settlement Approval. Upon preliminary review, the Court  
26 finds that the Agreement, and the Settlement it incorporates, appears fair,  
27 reasonable, and adequate. *See generally* Fed. R. Civ. P. 23; *Manual for Complex*  
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1 *Litigation* (Fourth) § 21.632 (2004). Accordingly, the Agreement is preliminarily  
2 approved and is sufficient to warrant sending notice to the Class.

3 7. Jurisdiction. The Court has subject matter jurisdiction over the Action  
4 pursuant to 28 U.S.C. §§ 1332 and 1367, and personal jurisdiction over the Parties  
5 before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. §  
6 1391.

7 8. Fairness Hearing. A Fairness Hearing shall be held before this Court  
8 on \_\_\_\_\_ at the United States District Court for the Central  
9 District of California, Edward R. Roybal Federal Building and United States  
10 Courthouse, 255 East Temple Street, Courtroom 880, Los Angeles, CA 90012-  
11 3332, to determine, among other things, (a) whether the Action should be finally  
12 certified as a class action for settlement purposes pursuant to Fed. R. Civ. P. 23(a),  
13 (b)(2), and (b)(3); (b) whether the settlement of the Action pursuant to the terms  
14 and conditions of the Agreement should be approved as fair, reasonable and  
15 adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e); (c) whether the  
16 Action should be dismissed with prejudice pursuant to the terms of the Agreement;  
17 (d) whether Class Members who do not timely request exclusion should be bound  
18 by the Release set forth in the Agreement; (e) whether Class Members and related  
19 persons should be subject to a permanent injunction; and (f) whether to grant  
20 Plaintiffs' Counsel's application for an award of Attorneys' Fees and Expenses and  
21 Incentive Awards for Plaintiffs and Related Plaintiffs (the "Fee Application").  
22 Papers in support of final approval of the Agreement and the Fee Application shall  
23 be filed with the Court according to the schedule set forth in Paragraph 14 below.  
24 Objections to the Agreement or the Fee Application shall be filed with the Court on  
25 or before the Objection Deadline set forth in Paragraph 14 below, and papers in  
26 response to such objections must be filed on or before \_\_\_\_\_.  
27 The Fairness Hearing may be postponed, adjourned, or continued by order of the  
28 Court without further notice to the Class. After the Fairness Hearing, the Court



1 may enter a Final Order and Final Judgment in accordance with the Agreement that  
2 will fully and finally adjudicate the rights of the Class Members with respect to the  
3 proposed Released Claims.

4 9. Administration. In consultation with and with the approval of  
5 Defendants, Plaintiffs' Counsel is hereby authorized to establish the means  
6 necessary to administer the proposed Settlement and implement the claims process,  
7 in accordance with the terms of the Agreement.

8 10. Class Notice. The form and content of the proposed Long Form  
9 Notice and Summary Notice, attached as Exhibits E and F, respectively, to the  
10 Agreement, and the notice methodology described in the Agreement and the  
11 Declaration of the Settlement Administrator (attached as Exhibit G to the  
12 Agreement), are hereby approved. Pursuant to the Agreement, the Court appoints  
13 Angeion Group as the Settlement Administrator to help implement the terms of the  
14 Agreement.

15 (a) Notice Date. No later than \_\_\_\_\_, the  
16 Settlement Administrator shall provide notice to the Class pursuant to the terms of  
17 the Agreement and the deadlines set forth in Paragraph 14 below, in accordance  
18 with the notice program set forth in the Declaration of the Settlement Administrator  
19 (attached as Exhibit G to the Agreement). The Parties shall coordinate with the  
20 Settlement Administrator to provide notice to the Class pursuant to terms therein.

21 (b) Findings Concerning Notice. The Court finds that the  
22 Settlement is fair and reasonable such that the Long Form Notice and Summary  
23 Notice should be provided pursuant to the Agreement and this Order.

24 (c) The Court finds that the form, content, and method of  
25 disseminating notice to the Class as described in Paragraphs 10 and 14 of this  
26 Order: (i) comply with Rule 23(c)(2) of the Federal Rules of Civil Procedure as  
27 they are the best practicable notice under the circumstances, and are reasonably  
28 calculated, under all the circumstances, to apprise the members of the Class of the



1 pendency of the Action, the terms of the Settlement, and their right to object to the  
2 Settlement or exclude themselves from the Settlement Class; (ii) comply with Rule  
3 23(e) as they are reasonably calculated, under the circumstances, to apprise the  
4 Class Members of the pendency of the Action, the terms of the proposed  
5 Settlement, and their rights under the proposed settlement, including, but not  
6 limited to, their right to object to or exclude themselves from the proposed  
7 Settlement and other rights under the terms of the Settlement Agreement;  
8 (iii) constitute due, adequate, and sufficient notice to all Class Members and other  
9 persons entitled to receive notice; and (iv) meet all applicable requirements of law,  
10 including, but not limited to, 28 U.S.C. § 1715, Fed. R. Civ. P. 23(c) and (e), and  
11 the Due Process Clause(s) of the United States Constitution. The Court further  
12 finds that all of the notices are written in simple terminology, are readily  
13 understandable by Class Members, and comply with the Federal Judicial Center's  
14 illustrative class action notices.

15 11. Exclusion from Class. Any Class Member who wishes to be excluded  
16 from the Class must send to the Settlement Administrator by U.S. Mail a personally  
17 signed letter, including their (a) full name, (b) current address, (c) a clear statement  
18 communicating that they elect to be excluded from the Class, do not wish to be a  
19 Class Member, and elect to be excluded from any judgment entered pursuant to the  
20 Settlement, (d) their signature, and (e) the case name and case number of the  
21 Action. A Class Member can exclude only himself or herself from the Class, and  
22 shall not be allowed to request that another individual or a group be excluded.  
23 "Mass" or "class" opt-outs are not permitted. Any such Request for Exclusion must  
24 be postmarked and sent to the Settlement Administrator no later than  
25 \_\_\_\_\_ (the "Opt-Out Date"). The Settlement  
26 Administrator shall forward copies of any written requests for exclusion to  
27 Plaintiffs' Counsel and Defense Counsel. The Settlement Administrator shall file a  
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1 list reflecting all timely requests for exclusion with the Court no later than seven (7)  
2 days before the Fairness Hearing.

3 If the proposed Settlement is finally approved, any potential Class Member  
4 who has not submitted a timely written Request for Exclusion on or before the  
5 Opt-Out Date shall be bound by all terms of the Agreement and the Final Order and  
6 Final Judgment, regardless of whether they have requested exclusion from the  
7 Settlement, even if the potential Class Member previously initiated or subsequently  
8 initiates any litigation against any or all of the Released Parties relating to Released  
9 Claims. All persons or entities who properly exclude themselves from the Class  
10 shall not be Class Members and shall relinquish their rights or benefits under the  
11 Agreement, should it be approved, and may not file an objection to the Settlement  
12 or be entitled to any settlement benefits.

13 12. Objections and Appearances. Any Class Member who intends to  
14 object to the fairness, reasonableness, and/or adequacy of the Settlement must, in  
15 addition to filing the written objection with the Court through the Court's CM/ECF  
16 system (or any other method in which the Court will accept filings, if any) no later  
17 than the Objection Deadline, provide a copy of the written objection by U.S. mail or  
18 e-mail to the Settlement Administrator with a copy by U.S. Mail or e-mail to  
19 Plaintiffs' Counsel and Defense Counsel (at the addresses set forth below)  
20 postmarked no later than the Objection Deadline. Class Members who object must  
21 set forth: (a) their full name; (b) current address; (c) a written statement of their  
22 objection(s) and the reasons for each objection; (d) a statement of whether they  
23 intend to appear at the Fairness Hearing (with or without counsel); (e) their  
24 signature; (f) a statement, sworn to under penalty of perjury pursuant to 28 U.S.C.  
25 § 1746, attesting to the fact that he or she purchased one or more of the Subject  
26 Products during the Class Period; (g) details of their purchase of the Subject  
27 Products, including the Subject Products purchased, and the date and location of  
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1 purchase; and (h) the case name and case number of the Action. Objections must  
2 be served on Plaintiffs' Counsel and Defense Counsel as follows:

3 *Upon Plaintiffs' Counsel at:*

4 L. Timothy Fisher  
5 Yeremey Krivoshey  
6 **BURSOR & FISHER, P.A.**  
7 1990 North California Blvd., Suite 940  
8 Walnut Creek, California 94596  
9 ltfisher@bursor.com  
10 ykrivoshey@bursor.com

11 *Upon Defense Counsel at:*

12 Scott M. Voelz  
13 Daniel J. Faria  
14 **O'MELVENY & MYERS LLP**  
15 400 South Hope Street  
16 Los Angeles, California 90071-2899  
17 svoelz@omm.com  
18 dfaria@omm.com

19 James M. Lee  
20 David Crane  
21 **LTL ATTORNEYS LLP**  
22 601 South Figueroa Street, Suite 3900  
23 Los Angeles, California 90017  
24 james.lee@ltlattorneys.com  
25 david.crane@ltlattorneys.com

26 Class Members or their attorneys who intend to make an appearance at the  
27 Fairness Hearing must deliver a notice of intention to appear to Plaintiffs' Counsel  
28 identified and to Defense Counsel, and file said notice with the Court, no later than  
the date scheduled in paragraph 14 below, or as the Court may otherwise direct.  
Objections that are mailed to the Court (and not filed pursuant to the Court's  
CM/ECF system, or any other method in which the Court will accept filings, if  
any), or objections that are served on the Parties but not filed with the Court, shall  
not be received or considered by the Court at the Fairness Hearing. And any Class  
Member who fails to comply with the provisions in this Paragraph shall waive and  
forfeit any and all rights he or she may have to appear separately and/or to object,  
and shall be bound by all the terms of the Agreement, this Order, and by all  
proceedings, orders, and judgments, including, but not limited to, the release in the

1 Agreement. The Settlement Administrator, Defense Counsel, and Class Counsel  
2 shall promptly furnish each other copies of any and all objections that might come  
3 into their possession.

4 13. Preliminary Injunction. All Class Members and/or their  
5 representatives who do not timely and properly exclude themselves from the Class  
6 are barred and enjoined from directly, indirectly, derivatively, in a representative  
7 capacity, or in any other capacity filing, commencing, prosecuting, maintaining,  
8 intervening in, participating in, conducting, or continuing any action in any forum  
9 (state or federal) as individual actions, class members, putative class members, or  
10 otherwise against the Released Parties (as that term is defined in the Agreement) in  
11 any court or tribunal asserting any of the Released Claims (as that term is defined in  
12 the Agreement), and/or from receiving any benefits from any lawsuit,  
13 administrative or regulatory proceeding, or order in any jurisdiction, based on or  
14 relating to the Released Claims. In addition, all such persons are hereby barred and  
15 enjoined from filing, commencing, or prosecuting a lawsuit against Defendants (or  
16 against any of their related parties, parents, subsidiaries, or affiliates) as a class  
17 action, a separate class, or group for purposes of pursuing a putative class action  
18 (including by seeking to amend a pending complaint to include class allegations or  
19 by seeking class certification in a pending action in any jurisdiction) on behalf of  
20 Class Members who do not timely exclude themselves from the Class, arising out  
21 of, based on or relating to the Released Claims. Pursuant to 28 U.S.C. §§ 1651(a)  
22 and 2283, the Court finds that issuance of this preliminary injunction is necessary  
23 and appropriate in aid of the Court's continuing jurisdiction and authority over the  
24 Action.

25 14. Summary of Deadlines. In summary, the deadlines set by this Order  
26 are as follows. If any deadline set forth in this Order falls on a Saturday, Sunday,  
27 or federal holiday, then such deadline shall extend to the next Court day. These  
28 deadlines may be extended by order of the Court, for good cause shown, without

1 further notice to the Class. Class Members must check the Settlement Website  
2 regularly for updates and further details regarding this settlement:

3 (a) The Long Form Notice shall be published on the Settlement  
4 Website and sent via mail or email to class members for whom Defendants have  
5 contact information no later than \_\_\_\_\_ (the “Notice  
6 Date”);

7 (b) The Internet advertising portion of the Class Notice program  
8 shall commence no later than \_\_\_\_\_.

9 (c) Beginning no later than the Notice Date, the Summary Notice  
10 shall be published in the California edition of USA Today once a week for four  
11 successive weeks.

12 (d) The Settlement Website and Toll-Free Telephone Number shall  
13 be established and become operational no later than \_\_\_\_\_.

14 (e) All completed Claim Forms must be postmarked and mailed to  
15 the Settlement Administrator or uploaded to the Settlement Website no later than  
16 \_\_\_\_\_ (“the Claim Deadline”).

17 (f) All written objections to the Agreement and written notices of  
18 an objector’s intention to appear at the Fairness Hearing shall be filed with the  
19 Court and served on Plaintiffs’ Counsel and Defense Counsel no later than  
20 \_\_\_\_\_ (“the Objection Deadline”).

21 (g) All Requests for Exclusion shall be postmarked and sent to the  
22 Settlement Administrator no later than \_\_\_\_\_ (“the Opt-Out Date”).

23 (h) A Fairness Hearing shall be scheduled for \_\_\_\_\_.

24 (i) Not later than seven (7) calendar days before the date of the  
25 Fairness Hearing, the Settlement Administrator shall file with the Court: (a) a list of  
26 those persons who have opted out or excluded themselves from the Settlement; and  
27 (b) the details regarding the number of valid Claim Forms received and processed  
28 by the Settlement Administrator.

1 (j) Plaintiffs' motion in support of final approval of the Settlement  
2 and Plaintiffs' Counsel's Fee Application shall be filed no later than \_\_\_\_\_  
3 and posted to the Settlement Website as soon as practicable thereafter, and may be  
4 supplemented no later than seven (7) days prior to the Fairness Hearing.

5 15. Termination of Settlement. In the event the Court does not grant final  
6 approval to the Settlement, or for any reason the parties fail to obtain a Final Order  
7 and Final Judgment as contemplated in the Agreement, or the Agreement is  
8 terminated pursuant to its terms for any reason or the Effective Date does not occur  
9 for any reason, then the following shall apply:

10 (a) All orders and findings entered in connection with the  
11 Agreement shall become null and void and have no force and effect whatsoever,  
12 shall not be used or referred to for any purposes whatsoever, and shall not be  
13 admissible or discoverable in this or any other proceeding;

14 (b) The conditional certification of the Class pursuant to this Order  
15 shall be vacated automatically, and the Action shall proceed as though the Class  
16 had never been certified pursuant to this Agreement and such findings had never  
17 been made;

18 (c) Nothing contained in this Order is, or may be construed as, a  
19 presumption, concession, or admission by or against Defendants or Plaintiffs of any  
20 default, liability, or wrongdoing as to any facts or claims alleged or asserted in the  
21 Action, or in any actions or proceedings, whether civil, criminal, or administrative,  
22 including, but not limited to, factual or legal matters relating to any effort to certify  
23 the Action as a class action;

24 (d) Nothing in this Order or pertaining to the Agreement, including  
25 any of the documents or statements generated or received pursuant to the claims  
26 administration process, shall be used as evidence in any further proceeding in this  
27 case, including, but not limited to, motions or proceedings seeking treatment of the  
28 Action as a class action;

1 (e) Nothing in this Order or pertaining to the Agreement is, or may  
2 be construed as, a presumption, concession, or admission by or against Defendants  
3 that the Action meets the requisites for certification as a class action under federal  
4 or California law; and

5 (f) All of the Court's prior Orders having nothing whatsoever to do  
6 with the Settlement shall, subject to this Order, remain in full force and effect.

7 16. Use of Order. This Order shall be of no force or effect if the  
8 Settlement does not become final and shall not be construed or used as an  
9 admission, concession, or declaration by or against Defendants of any fault,  
10 wrongdoing, breach, or liability, or that any of the claims asserted in the Action  
11 meet the requisites for certification as a class action under federal or California law.  
12 Nor shall this Order be construed or used as an admission, concession, or  
13 declaration by or against Plaintiffs or the other Class Members that their claims lack  
14 merit or that the relief requested is inappropriate, improper, or unavailable, or as a  
15 waiver by any party of any defenses or claims he, she or it may have in the Action  
16 or in any other lawsuit.

17 17. Alteration of Exhibits. Plaintiffs' Counsel and Defense Counsel are  
18 hereby authorized to use all reasonable procedures to further the administration of  
19 the Settlement that are not materially inconsistent with this Order or the Agreement,  
20 including making, without further approval of the Court, minor changes to the form  
21 or content of the Long Form Notice, Summary Notice, and other exhibits that they  
22 jointly agree are reasonable or necessary.

23 18. Retaining Jurisdiction. This Court shall maintain continuing  
24 jurisdiction over these settlement proceedings to ensure the effectuation thereof for  
25 the benefit of the Class, and for any other necessary purpose.

26 19. Extension of Deadlines. Upon application of the Parties and good  
27 cause shown, the deadlines set forth in this Order may be extended by order of the  
28 Court, without further notice to the Class. Class Members must check the



1 Settlement website regularly for updates and further details regarding settlement  
2 deadlines.

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5 DATED: \_\_\_\_\_

\_\_\_\_\_  
6 The Honorable Philip S. Gutierrez  
7 UNITED STATES DISTRICT JUDGE  
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